IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

OP.No. 28565 of 1999(A)

PETITIONERS:

1. **V.N.INDIRAKUTTY,**
   PAYWARD KEEPER GRADE I,
   MEDICAL COLLEGE HOSPITAL, ALAPPUZHA.

2. **K.S.RADHAKRISHNAN NAIR,**
   PAYWARD KEEPER GRADE I,
   KOTTAYAM MEDICAL COLLEGE, KOTTAYAM.

3. **M.HEMALATHA RANI,**
   PAYWARD KEEPER GRADE I,
   GOVERNMENT HOSPITAL, THIRUVALLA.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,**
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE MANAGING DIRECTOR,**
   KERALA HEALTH RESEARCH & WELFARE SOCIETY,
   GENERAL HOSPITAL CAMPUS, THIRUVANANTHAPURAM.

3. **BHAGYALEKSHMI,**
   SENIOR ASSISTANT, KERALA HEALTH RESEARCH & WELFARE
   SOCIETY, GENERAL HOSPITAL CAMPUS, THIRUVANANTHAPURAM.

4. **VENUGOPAL, JUNIOR ASSISTANT,**
   KERALA HEALTH RESEARCH & WELFARE SOCIETY,
   GENERAL HOSPITAL CAMPUS, THIRUVANANTHAPURAM.

5. **M.LILLY, JUNIOR ASSISTANT,**
   KERALA HEALTH RESEARCH & WELFARE SOCIETY,
   GENERAL HOSPITAL CAMPUS, THIRUVANANTHAPURAM.

6. **D.SUNITHA, TYPIST,**
   HEAD OFFICE, KERALA HEALTH RESEARCH & WELFARE
   SOCIETY, GENERAL HOSPITAL CAMPUS, THIRUVANANTHAPURAM.

7. **R.LEELAMMA, TYPIST,**
   KERALA HEALTH RESEARCH & WELFARE SOCIETY,
   HEAD OFFICE, REGIONAL ENGINEERING OFFICE,
   MEDICAL COLLEGE, THIRUVANANTHAPURAM.

BY ADV. SRI.ASHOK M CHERIAN for R2
BY GOVERNMENT PLEADER SMT. T.B.REMANI for R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.48701/1999 IN O.P.NO.28565/1999 A

DISMISSED

27/09/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER G.O.(RT) NO.4431/76/HD DTD. 29/12/1976.**

EXT.P2: **COPY OF ORDER G.O.(MS) NO.494/95/H&FWD. DTD. 18/10/95.**

EXT.P3: **COPY OF THE SENIORITY LIST OF PAYWARD KEEPER GR.I AS ON 31/10/91.**

EXT.P4: **COPY OF THE COVERING LETTER OF THE DRAFT RULES DTD. 15/09/98.**

EXT.P5: **COPY OF THE RELEVANT EXTRACT CONCERNING PAYWARD KEEPER GRADE I, JUNIOR ASSISTANT AND TYPIST.**

EXT.P6: **COPY OF THE ORDER NO.E5-1688/99/KHRWS DTD. 14/10/99.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **COPY OF SENIORITY LIST OF JUNIOR ASSISTANT/ ACCOUNTANT AS ON 31/10/1991.**

/TRUE COPY/

P.S.TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.28565 of 1999-A

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Dated this the 27th day of September, 2007.

JUDGMENT

Petitioners are Payward Keepers Grade I in the service of a Government owned society, hereinafter referred to as the "KHRWS", of which the second respondent is the Managing Director. Respondents 3 to 5 are also Payward Keepers Grade I, while respondents 6 and 7 are Typists, going by Ext.P3 seniority list. Respondents 3 to 5 have, thereafter, been posted either as Senior Assistant or Junior Assistant.

2. The short issue that arises for decision is as to whether Payward Keepers Grade I are entitled to parity in scales of pay with that of the Junior Assistants and Typists.

3. The basic facts to decide that issue are as follows:

By Ext.P1, Assistants, Typists and House Keepers Grade I carried the same scale of pay. Ext.P2 Rules were, thereafter, made by KHRWS as per which Payward Keepers Grade I, Typists and Junior Assistants carried the same scale of pay of Rs.1050-1660. Thereafter, the impugned Ext.P4 has been issued by the KHRWS as the Special Rules by which Typists and Junior Assistants carry the scale of pay of Rs.1125-1720, while Payward Keepers Grade I have the scale of Rs.1050-1660. According to the petitioners, the duties and responsibilities attached to the posts of Payward Keepers Grade I and Junior Assistants, going by Ext.P2, are virtually the same and the qualification prescribed for Junior Assistants and Payward Keepers Grade I is degree for direct recruitment, while that for the Typists is only SSLC

with Typewriting and therefore, there is no rational basis to treat Payward Keepers Grade I and Junior Assistants differentially in the matter of pay scales. It is also pointed out that Ext.P3 seniority list evidences that Payward Keepers Grade I have been converted to Junior Assistants, which is a clear indicator to the fact that Junior Assistants and Payward Keepers Grade I are to be treated equally for all intents and purposes.

4. Though Ext.P5 does not contain the entire Special Rules, a copy of which has been placed before me by the learned counsel for the petitioners, it is seen that the Special Rules offer further promotional avenues to the Junior Assistants and Payward Keepers. The Junior Assistant, on the next promotion, does not reach the scale of pay of Rs.1400-2300 but will be pegged at a scale in between in a different category. While Payward Keepers Grade I would go to the scale of pay of Rs.1400-2300 while on becoming

Payward Keeper Senior Grade moving from the scale of Rs.1050-1660 while working as Payward Keeper Grade I, the Typists have a different channel of upward movement in service. The Junior Assistant, going by Ext.P5 also, has promotional avenues in a channel into which Payward Keepers Grade I have no opening. Not only that, the entry of Junior Assistants in terms of Ext.P5 is only by direct recruitment from among graduates. Payward Keepers Grade II can aspire for promotion as Payward Keepers Grade I. The duties and responsibilities of the Junior Assistants, going by Ext.P2, are attending all clerical works of both establishment and account branches, while the seven enumerated duties of Payward Keepers Grade II and Grade I at Sl.No.III in Ext.P2 would show that their area of operation is basically the paywards and the specific entry at paragraph III.v that they have “to attend the office work, if any,” is by itself not an indicator sufficient enough to equate the duties and responsibilities of the Junior Assistants with that of Payward Keepers Grade I, as argued on behalf of the petitioners. Not

only that, Ext.P2 puts Payward Keepers Grade II and Grade I into a common group for laying down the duties and responsibilities, while Payward Keepers Grade I is a promotion post of Payward Keepers Grade II. These materials are abundantly sufficient to hold that there is no jurisdictional fact on the basis of which a writ of mandamus or declaration would issue from the writ court to provide pay parity to Payward Keepers Grade I with that of the Junior Assistants. No relief in that regard can, therefore, be granted in this writ petition.

5. However, as rightly pointed out by the learned counsel for the petitioners, it may be a matter of heart-burn to the petitioners who have showed that consistently from 1976, the Assistants, Typists and Payward Keepers Grade I had carried the same scale of pay until Ext.P5 was brought into force only in 1998. This is not a matter on which a legal issue would arise for re-dressal through Court, though it may be a matter for KHRWS to consider, in its wisdom, having

regard to the total number of employees who would be in the category of Payward Keepers Grade I, at least, those in service as such on the date of the commencement of Ext.P5 Special Rules. If the petitioners make appropriate request in that regard, such issue would be considered by the KHRWS sympathetically and on the merits of which this Court makes no opinion because that would entirely be a matter of policy. If such requests are made by the petitioners, a final decision shall follow within an outer limit of four months from the date of receipt of a copy of this judgment and the representation, whichever is later.

The writ petition is disposed of in the above terms.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 27th September, 2007.